

N. KEITH CHAMBERS  
EXECUTIVE DIRECTOR

IN THE MATTER OF:

**Complainant,**

and

**Respondent.**

Charge No. 2005CF0881  
EEOC No. 21BA43335  
ALS No. 7-530

**Judge Reva S. Bauch**

This matter is before the Commission on Respondent's Motion to Dismiss for Want of Prosecution. Complainant had an opportunity to file a response but failed to do so. Accordingly, this matter is now ready for disposition.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

The following facts were derived from the record file in this matter.

1. This matter was set for an initial status hearing on September 19, 2007.
2. On September 19, 2007, both parties appeared and another status hearing date was scheduled for November 21, 2007 so that Complainant could secure counsel.
3. On or about November 21, 2007, Laurel Hickman, Esq. appeared on Complainant's behalf. A status hearing date of December 19, 2007 was set.
4. On or about November 27, 2007, Attorney Laurel Hickman filed an appearance and remains Complainant's attorney of record on this matter.

5. On or about December 19, 2007, both parties were present for the status hearing. I entered an order requiring the parties to serve initial discovery requests by February 22, 2008, and I set a status hearing date of April 16, 2008.
6. On or about April 16, 2008, Respondent appeared for a status hearing, but Complainant failed to appear.
7. My April 16, 2008 order stated that failure to appear for scheduled status dates and comply with Commission orders may be grounds for dismissal or other appropriate sanctions.
8. On April 16, 2008, Complainant had still not responded to Respondent's discovery requests.
9. On May 21, 2008, Complainant failed to appear at the scheduled status hearing.
10. On May 21, 2008, I entered an order granting Respondent leave to file a Motion to Dismiss for Want of Prosecution, or in the alternative, a Motion to Compel.
11. On or about July 2, 2008, Respondent filed its Motion to Dismiss for Want of Prosecution or, in the alternative, a Motion to Compel.
12. On July 3, 2008, all parties were present at the status hearing and Respondent's Motion to Dismiss was denied, but its Motion to Compel was granted.
13. Complainant responded to Respondent's First Set of Requests for Admission, Interrogatories and Document Requests on or about September 17, 2008, a full two months after he was ordered to do so on July 3, 2008.
14. On or about December 17, 2008, Respondent appeared for the status hearing, but Complainant failed to appear. Instead, Phillip Oliver appeared on Complainant's behalf, but did not file an appearance and is not an attorney of record for Complainant.
15. On January 21, 2009, Respondent appeared for the scheduled status, but Complainant failed to appear. Rather, Edward Thornton, a non-attorney, was present on behalf of Complainant.

16. On or about February 5, 2009, Respondent appeared for the scheduled status hearing, but Complainant failed to appear. Again, Mr. Thornton appeared for Complainant.
17. On or about March 5, 2009, both parties were represented by counsel at the status hearing.
18. On or about April 9, 2009, both parties were represented by counsel at the status hearing. Complainant was ordered to serve Respondent with a draft of the Joint Pre-Hearing Memorandum no later than May 1, 2009.
19. On or about May 11, 2009, Respondent sent Complainant's counsel a letter stating that Respondent had not received Complainant's Draft Pre-Hearing Memorandum.
20. On or about May 28, 2009, Complainant filed a Motion to Continue and set the Motion for June 4, 2009.
21. On or about June 4, 2009, Respondent appeared for the status hearing. Even though Complainant had set his Motion to Continue for June 4, 2009, Complainant failed to appear. Rather, Mr. Thornton, a non-attorney, was present on behalf of Complainant.
22. On June 4, 2009, Thornton represented to Respondent's counsel that he would receive the Draft Pre-Hearing Memorandum by the afternoon of June 4, 2009.
23. On or about June 5, 2009, Respondent's counsel received a voicemail message from Mr. Thornton stating he had not received the Draft Pre-Hearing Memorandum from Attorney Hickman.
24. As of July 28, 2009, Respondent had not heard from Complainant's counsel and had not been served with Complainant's Draft Pre-Hearing Memorandum.
25. On July 28, 2009, Respondent filed its second Motion to Dismiss for Want of Prosecution.
26. On August 6, 2009, both Respondent and Complainant's counsel appeared at a status hearing where I set a briefing schedule for the Respondent's Motion to Dismiss.

27. As per my August 6, 2009 order, Complainant had until August 27, 2009 to file a response.

28. To date, Complainant has not filed a response to the Respondent's Motion to Dismiss for Want of Prosecution.

### **CONCLUSIONS OF LAW**

1. A complaint may be dismissed when a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance or unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings.

2. Since Complainant has failed to appear at several scheduled status hearings and has failed to comply with several Commission Orders, the appropriate sanction is dismissal of the Complaint, and the underlying charge, with prejudice.

### **DISCUSSION**

Under Commission procedural rules, an Administrative Law Judge may recommend to the Commission that a complaint be dismissed where a party fails to appear at a scheduled status hearing, unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings. **See 56 Ill. Admin. Code §5300.750(e).**

A fundamental principle governing practice before the Commission is that complainants must diligently pursue their cases once they are docketed with the Commission. Complainant's counsel has failed to appear for several scheduled status hearings. At some scheduled status hearing, Complainant's counsel has sent other attorneys, not of record, and even non-attorneys, to represent the Complainant. He has also failed to comply with several Commission Orders, including orders on responding to Respondent's discovery requests and preparing a Draft Pre-Hearing Memorandum. Complainant has unreasonably delayed and protracted these proceedings. As such, it is

appropriate to dismiss his Complaint, with prejudice. **Aceves and Everlast Concrete, Inc. and Artech Concrete, Inc., IHRC, ALS No. 12187, May 18, 2005.**

In addition, Complainant has not filed any response to the Motion. The Commission has held that a dispositive motion should be granted where it appears on its face to be valid and the Complainant has failed to file a response. **Jones and Burlington Northern Railroad, 25 Ill. HRC Rep. 101 (1986).**

#### **RECOMMENDATION**

I recommend the Commission dismiss the Complaint, and the underlying charge, with prejudice.

#### **HUMAN RIGHTS COMMISSION**

BY: \_\_\_\_\_  
**REVA S. BAUCH**  
**DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE**  
**ADMINISTRATIVE LAW SECTION**

**ENTERED: September 10, 2009**